

IN THE FIRST CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2014 MAY 14 AM 8:58

RICHARD R. ROOKER, CLERK

STATE OF TENNESSEE, *ex rel.*  
ROBERT E. COOPER, JR.,  
Attorney General and Reporter,

Petitioner,

v.

YAHYA MUSHREH, individually,  
and d/b/a Handy Mart # 27712  
(formerly d/b/a Rakestraw  
Handy Mart #1)  
3909 Elliston Road, Memphis, TN 38111,

Respondent.

No. 11C2673  
Judge Gayden

PETITION TO ENFORCE AGREED ORDER AND INCORPORATED  
ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter, (hereinafter "Attorney General"), at the request of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance, (hereinafter "Division") (collectively referred to as "Petitioner," "State," or "State of Tennessee") files this Petition to Enforce Agreed Order and Incorporated Assurance of Voluntary Compliance ("Petition") pursuant to Tenn. Code Ann. § 47-18-107(d) and (f) of the Tennessee Consumer Protection Act (hereinafter "the Consumer Act"), and respectfully shows the Court as follows:

1. The Division and the Attorney General, acting pursuant to the Consumer Act and the Agreed Order and incorporated Assurance of Voluntary Compliance entered on July 8, 2011, (hereinafter "Assurance,")(attached as Collective Exhibit A) have investigated certain acts and practices of Yahya Mushreh, individually, and d/b/a Handy Mart # 27712 (formerly d/b/a Rakestraw Handy Mart #1) located at 3909 Elliston Road, Memphis, Tennessee 38111 ("Respondent").

2. Upon completion of such investigation, the State has determined that certain acts and practices of the Respondent, specifically described in Paragraph 3 of this Petition, constitute violations of the Agreed Order and incorporated Assurance, and therefore are *prima facie* violations of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*

3. Based upon the investigation of Respondent and upon information and belief, the State alleges the following:

- (A) Respondent is in the business of selling tobacco goods and/or services to consumers in the State of Tennessee.
- (B) Respondent entered into an Agreed Order and incorporated Assurance that were entered by the Court on July 8, 2011.
- (C) The Agreed Order and incorporated Assurance included a permanent injunction prohibiting Respondent from certain acts or practices such as violating the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, including but not limited to § 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.
- (D) The Agreed Order and incorporated Assurance included a permanent injunction prohibiting Respondent from certain acts and practices including representing, stating, promoting, claiming, advertising, or implying that Respondent will provide goods or services to consumers which Respondent is prohibited by law from

providing to consumers.

- (E) The Agreed Order and incorporated Assurance included a permanent injunction prohibiting Respondent from certain acts or practices including directly or indirectly selling or distributing in Tennessee any pack or other container of cigarettes containing fewer than 20 cigarettes which would be in violation of the Tennessee Minimum Cigarette Pack Size Act, Tenn. Code Ann. §§ 47-18-2001, *et seq.*
- (F) The Agreed Order and incorporated Assurance included a permanent injunction prohibiting Respondent from certain acts or practices including selling, distributing, or causing to be sold or distributed any cigarettes that are not in the original, sealed package in which they were placed by the manufacturer and which bears the health warning required by federal law which would be in violation of Tenn. Code Ann. § 39-17-1508.
- (G) The Agreed Order and incorporated Assurance included a permanent injunction prohibiting Respondent from certain acts and practices including breaking or otherwise opening any cigarettes or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the minimum cigarette package size defined by 21 C.F.R. § 1140.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use.
- (H) The Agreed Order and incorporated Assurance included a permanent injunction prohibiting Respondent from certain acts and practices including prohibiting Respondent from failing to comply with 21 C.F.R. § 1140.14(d) and 21 C.F.R. § 114.16(b).
- (I) The Agreed Order and incorporated Assurance required Respondent to implement training policies relating to the sale of tobacco products and single cigarettes at all retail outlets he owned or operated, in whole or in part, in the State of Tennessee and to train his employees in such policies regarding the importance of complying with the laws relating to, in part, the prohibition against the sale of single cigarettes. This training was to take place within 30 days of the entry of the Agreed Order and incorporated Assurance.
- (J) Respondent failed to train his employees with regard to the laws

relating to, in part, the prohibition against the sale of single cigarettes.

- (K) In March 2012, there were single cigarettes on the counter, in view of customers, at Respondent's business.
- (L) During the fall of 2013, a test shopper visited Respondent's business and the test shopper purchased a single cigarette that was not in the original, sealed package in which the cigarette was placed by the manufacturer.
- (M) The Agreed Order and incorporated Assurance further required Respondent to provide the Attorney General's designee with a copy of its youth access tobacco policies and a copy of its single cigarette sales policies adopted pursuant to the Assurance within 45 days of the entry of the Assurance.
- (N) To date, Respondent has not provided the Attorney General's designee with copies of its youth access tobacco policies or its single cigarette sales policies adopted pursuant to the Agreed Order and incorporated Assurance.
- (O) The Assurance provides as follows:

#### PENALTY FOR FAILURE TO COMPLY

- 14. Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.
  - 15. Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties, remedies and sanctions, including but not limited to, contempt sanctions and the imposition of attorneys' fees and civil penalties.
- (P) Respondent was notified in writing, through his counsel, of the alleged violations of the Agreed Order and incorporated Assurance by letter dated January 3, 2014 (attached as Exhibit B).

(Q) Respondent's conduct described herein constitutes violations of the Agreed Order and incorporated Assurance and are unfair and deceptive acts or practices.

4. The above described conduct constitutes good cause to reopen the Assurance of Voluntary Compliance pursuant to Tenn. Code Ann. § 47-18-107(d).

PREMISES CONSIDERED, the State of Tennessee prays that

1. This Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That this Court adjudge and decree that Respondent has engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act and other laws and regulations.

3. That this Court adjudge and decree that Respondent has engaged in the aforementioned violations of the Agreed Order and incorporated Assurance of Voluntary Compliance.

4. That pursuant to Tenn. Code Ann. § 47-18-107, this Court grant continuing permanent prohibitory and mandatory injunctive relief against Respondent to enjoin and ameliorate the foregoing acts or practices, which are in violation of the Tennessee Consumer Protection Act and other laws and regulations and such order be issued without cost bond as set forth in Tenn. Code Ann. § 47-18-108(a)(4).

5. That this Court adjudge and decree that Respondent pay civil penalties for each violation in accordance with Tenn. Code Ann. § 47-18-107(f) of not more than \$1,000.00 per violation of the Agreed Order and incorporated Assurance to the State.

6. That this Court enter a judgment against Respondent and in favor of the State of Tennessee for reasonable costs and expenses of the investigation and

prosecution of the Respondent's actions, including attorneys' fees and costs, pursuant to Tenn. Code Ann. § 47-18-108 (a)(5) and (b)(4) and paragraph 5 of the Assurance.

7. That all costs in this case be taxed against Respondent.

8. That no costs be taxed to the State as set forth in Tenn. Code Ann. § 47-18-116.

9. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully Submitted,



**ROBERT E. COOPER, JR.**  
Attorney General and Reporter  
B.P.R. No. 10934



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*Rebekah A Baker by us*  
**REBEKAH A. BAKER** *w/permission*

Assistant Attorney General

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# **COLLECTIVE EXHIBIT A**



FILED

2011 MAY 14 AM 8:58

FILED

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE 57  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

RICHARD R. ROOKER, CLERK

STATE OF TENNESSEE, *ex rel.*  
ROBERT E. COOPER, JR.,  
ATTORNEY GENERAL and REPORTER,

Petitioner,

v.

YAHYA MUSHREH, individually,  
and d/b/a Rakestraw Handy Mart # 1,  
3909 Elliston Road, Memphis, TN 38111  
Respondent.

No. 11C2673

D.C.

### AGREED FINAL ORDER

This cause came to be heard on the State of Tennessee's Petition and the Parties' Assurance of Voluntary Compliance ("Assurance"), and the Court is of the opinion that said Assurance should be approved.

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED that the Assurance, annexed hereto as Exhibit 1, is incorporated herein by reference as if set forth fully herein, and is, hereby, made a part of this Agreed Final Order ("Order").

IT IS ORDERED, ADJUDGED, and DECREED that the Assurance is hereby approved unless rescinded in writing by agreement of the parties and approved by the Court or modified by this Court for good cause shown.

IT IS ORDERED, ADJUDGED, AND DECREED that, pursuant to Tenn. Code Ann. § 47-18-

107, Respondent shall comply with all terms set forth in the Assurance.

IT IS ORDERED, ADJUDGED, AND DECREED that on the day of entry of the Assurance, Respondent shall pay to the Tennessee Attorney General the sum of One Thousand Dollars and 00/100 cents (\$1,000.00) by certified check made payable to the "Treasurer, State of Tennessee". All monies received shall be paid to and used as follows:

- (1) Five Hundred Dollars (\$500.00) to the Tennessee's Attorney General's office for reasonable attorneys' fees and costs of investigation, prosecution of this matter, which may be used for consumer protection purposes or other lawful purposes at the sole discretion of the Tennessee Attorney General;
- (2) Five Hundred Dollars (\$500.00) to the State of Tennessee as a payment to the General Fund of the State of Tennessee as a civil penalty; and

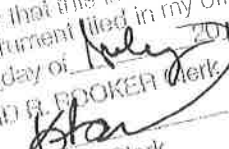
Without excusing Respondent's obligation to pay, if the entire monetary amount anticipated by the State of Tennessee is not received, any monies received shall first be attributed to attorneys' fees pursuant to paragraph (1) above, next to the civil penalties pursuant to paragraph (2) above. If more monies are received than anticipated by the State of Tennessee, any additional monies received shall be attributed to attorneys' fees pursuant to paragraph (1) above.

All costs associated with filing and distribution of this Agreed Final Order, Assurance and Petition and any other incidental cost or expenses incurred thereby shall be borne by Respondent. No court costs shall be taxed against the State as mandated by Tenn. Code Ann. § 47-18-116.

**IT IS SO ORDERED.**

ENTERED this the 8th day of July, 2011.

  
CIRCUIT COURT JUDGE

I hereby certify that this is a true copy  
of original instrument filed in my office  
this 8th day of July, 2011.  
By  RICHARD B. BOOKER  
Deputy Clerk

**APPROVED FOR ENTRY:  
FOR PETITIONER, TENNESSEE ATTORNEY GENERAL**

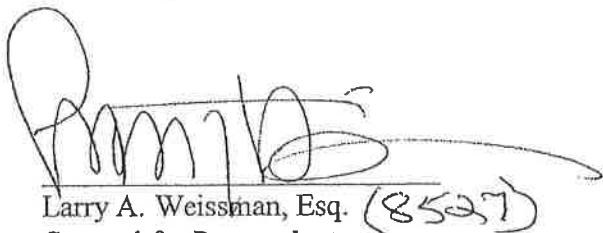


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ON BEHALF OF RESPONDENT:

A handwritten signature in black ink, appearing to read 'Larry A. Weissman', with a large, stylized flourish extending to the right.

Larry A. Weissman, Esq.

(8527)

Counsel for Respondent

TN B.P.R. No.008527

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IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED  
2011 JUL -8 AM 8:57  
RICHARD D. ROCKER, CLERK  
*[Signature]* D.C.

STATE OF TENNESSEE, *ex rel.* )  
ROBERT E. COOPER, JR., )  
Attorney General and Reporter, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
YAHYA MUSHREH, individually, )  
and d/b/a Rakestraw Handy Mart # 1, )  
3909 Ellison Road, Memphis, TN 38111 )  
 )  
Respondent. )  
 )

No. 11C2473

**ASSURANCE OF VOLUNTARY COMPLIANCE**

1. The State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter ("Attorney General"), at the request of Gary Cordell, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division"), accepts subject to court approval, this Assurance of Voluntary Compliance ("Assurance") given by Yahya Mushreh, individually, and d/b/a Rakestraw Handy Mart # 1 located at 3909 Ellison Road, Memphis, Tennessee 38111.

**WITNESSETH:**

2. Some of the facts and circumstances surrounding the execution of this Assurance

are as follows:

- A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. Specifically, information was received on July 20, 2010, that single cigarettes sales were taking place at Respondent's business, Rakestraw Handy Mart # 1. On July 27, 2010, loose cigarettes were found at this location by a state inspector. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General have alleged that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.* (hereinafter "Consumer Act") by engaging in violations of the Tennessee Minimum Cigarette Pack Size Act of 1999, Tenn. Code Ann. § 47-18-2003, Tenn. Code Ann. § 39-17-1508 and 21 C.F.R. § 1140.14(d).
  - B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Consumer Act.
  - C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense associated with litigation.
3. Now, therefore, acting pursuant to Tenn. Code Ann. § 47-18-107, subject to court approval, Respondent gives and the Attorney General accepts the following assurances.

#### DEFINITIONS

4. As used in this Assurance and accompanying Agreed Final Order, the following words or terms shall have the following meanings:
- A. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, electronic mail, website or other digital form, slide, radio, broadcast television, cable television, or commercial or infomercial whether live or recorded.
  - B. "Assurance of Voluntary Compliance" or "Assurance" shall mean this

document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee ex rel. Robert E. Cooper, Jr., Attorney General and Reporter, v. Yahya Mushreh, individually, and d/b/a Rakestraw Handy Mart # 1*.

- C. **"Clear and Conspicuous"** or **"Clearly and Conspicuously"** shall mean a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, physical or temporal location, or volume (if applicable), compared to other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement is necessary to prevent other information from being misleading, deceptive or unfair, then the statement must be presented in close proximity to the other information, in a manner that is readily noticeable, readable and understandable, and it must not be obscured in any manner. To be "Clear and Conspicuous," warnings, disclosures, limitations or exceptions must be set out in close temporal or physical conjunction with the benefits or goods described or referenced, or with appropriate captions, of such prominence that warnings, disclosures, limitations or exceptions, are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading or contradictory. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.
- D. **"Cigarette"** shall mean and refer to all rolled, shredded, or cut tobacco, or any substitute therefor, wrapped in paper, or substitute therefor, and all rolled, shredded or cut tobacco, or any substitute therefor, wrapped in homogenized tobacco wrapper, and being within customary cigarette sizes and marked in cigarette type packaging.
- E. **"Consumer"** shall mean any person, a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- F. **"Division"** or **"Division of Consumer Affairs"** shall mean the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance and any employees acting on its behalf.
- G. **"Petitioner," "State of Tennessee,"** or **"Attorney General"** shall mean the Tennessee Attorney General and Reporter and the Office of the Tennessee Attorney General.
- H. **"Order"** or **"Agreed Final Order"** shall mean the Agreed Final Order entered in

*State of Tennessee ex rel. Robert E. Cooper, Jr., Attorney General and Reporter v. Yahya Mushreh, individually, and d/b/a Rakestraw Handy Mart # 1, Davidson County Circuit Court on July 8, 2011.*

- I. **"Respondent"** shall mean and refer to Yahya Mushreh, individually, and d/b/a Rakestraw Handy Mart # 1, and/or any and all general partners, parent corporation(s), affiliates, subdivisions, future or past purchasers, merged parties, inheritors or other successors in interest, and all of his/her officers, directors, owners, employees, sales staff, managers, partners, parents, subsidiaries, affiliates, successors, assigns, agents and representatives acting on behalf of Yahya Mushreh and Rakestraw Handy Mart # 1.
- J. **"Tennessee Consumer Protection Act"** or **"Consumer Act"** shall mean the Tennessee Consumer Protection Act of 1977, as may be amended from time to time, and related statutes found at Tenn. Code Ann. § 47-18-101, *et seq.*
- K. **"Tennessee Minimum Cigarette Pack Size Act"** or **"Cigarette Pack Size Act"** shall mean the Tennessee Minimum Cigarette Pack Size Act of 1977, as may be amended from time to time, and related statutes found at Tenn. Code Ann. § 47-18-2003.
- L. **"Tobacco Products"** shall mean and include cigarettes of all kinds (including bidis), little cigars, cigars, loose tobacco, chewing tobacco, and snuff, to the extent such substances are or in the future may be offered for sale at the Respondent's business(es).

#### **JURISDICTION**

5. Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Final Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply for such further orders and directions as may be necessary or appropriate for the construction, modification, or execution of this Assurance and Agreed Final Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Final Order



against Respondent.

### VENUE

6. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

### PERMANENT INJUNCTION AND REHABILITATION

7. Accordingly, it is hereby agreed that upon approval of this Assurance by the Court, Respondent and anyone in concert with Respondent shall be permanently and forever enjoined, restrained and bound from directly and indirectly engaging in the practices set forth herein, and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

- A. Respondent shall be prohibited from engaging in any misleading, unfair, or deceptive acts or practices in the conduct of his/her business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.
- B. Respondent shall not represent, state, promote, claim, advertise, or imply that Respondent will provide goods or services to consumers which Respondent is prohibited by law from providing to consumers.
- C. Respondent shall fully comply with the Tennessee Minimum Cigarette Pack Size Act.
- D. Respondent shall be prohibited from, directly or indirectly, manufacturing, selling, or distributing, or causing to be sold or distributed in whole or in part in or from Tennessee any pack or other container of cigarettes containing fewer than twenty (20) cigarettes.
- E. Respondent shall not sell or distribute or cause to be sold or distributed any cigarettes that are not in the original, sealed package in which they were placed by the manufacturer and which bears the health warning required by federal law.

- F. Respondent shall not advertise, promote, sell or offer for sale, any good or service that is illegal or unlawful to sell in the State.
- G. Respondent shall not break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the minimum cigarette package size defined by 21 C.F.R. § 1140.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use.
- H. Respondent shall full comply 21 C.F.R. § 1140.14(d) and 21 C.F. R. §114.16(b).
- I. Respondent shall not sell or distribute cigarettes or other tobacco products to anyone under the age of eighteen and Respondent shall require identification of all persons purchasing cigarettes or other tobacco products sufficient to determine the purchaser's age.
- J. Within thirty (30) days of entry of this Assurance, Respondent shall implement hiring and training policies relating to the sale of tobacco products and single cigarettes at all retail outlets he owns or operates in whole or in part in the State of Tennessee or from the State of Tennessee consistent with the requirements of this Assurance. Prior to the expiration of the thirty (30) day period, all employees (permanent, temporary or otherwise) shall be trained in such policies regarding the importance of complying with the laws relating to the sale of cigarettes and youth access to tobacco products, including but not limited to the prohibition against the sale of single cigarettes. Respondent shall require that each employee, upon completion of such training, sign an acknowledgment that he or she has read and understands the policy statements and other information provided. Respondent shall be required to retain the acknowledgements for a period of three (3) years from the date of signing and shall make them available to the Attorney General upon request.
- K. Within thirty (30) days of entry of this Assurance, Respondent shall implement and provide all in-store personnel with additional periodic training relating to the hiring and training policies required by 7G to ensure that they maintain the requisite knowledge, skill, and motivation. Such training shall occur at least once a year and shall include, at a minimum, a review of applicable youth access to tobacco products laws and single cigarette laws. Respondent shall require that each employee, upon completion of such training, sign an acknowledgment that he or she has read and understands the policy statements and other information provided. Respondent shall be required to retain the acknowledgements for a

period of three (3) years from the date of signing and shall make them available to the Attorney General upon request.

- L. Within thirty (30) days of entry of this Assurance, Respondent shall implement the following self-monitoring measures relating to the sale of single cigarettes to any person and youth access to tobacco products at all Retail Outlets he owns or operates in whole or in part in the State, which shall include, at a minimum:
- i. Instructing each store manager and assistant store manager that, immediately upon assuming responsibility for supervising employees selling tobacco products, they must monitor staff compliance with youth access to tobacco products laws and policies, including the prohibition of the sale of single cigarettes. Respondent must inform the store manager and assistant store manager that instances of compliance and non-compliance with youth access laws and single cigarette sales and company policies on the part of those supervised will be given serious consideration in connection with that store manager's or assistant store manager's periodic performance review and in connection with subsequent decisions relating to the store manager's or assistant store manager's compensation, promotion, and retention (as applicable).
  - ii. Each store manager or assistant store manager shall report all violations of federal, state, and local laws concerning the sale of tobacco products to minors occurring at the store to the person identified to employees in the training required by paragraphs 7G and 7H above as soon as practicable after receiving notice of the alleged violation but in any event, within five (5) business days of receiving such notice.
  - iii. Each of Respondent's employees shall be informed that, to the extent that his or her job performance is reflected in the compliance or non-compliance of other employees or contractors with youth access to tobacco product laws, sale of single cigarette laws, and Respondent's business practices, Respondent will give such compliance or non-compliance consideration in connection with his or her compensation, promotion, and retention (as applicable). This paragraph applies to all employees and contractors whose duties include hiring, retention, training, and/or supervision of employees or contractors with responsibilities relating to the sale of tobacco products.
- M. Within ninety (90) days of entry of this Assurance, Respondent shall implement a policy and procedure for conducting or having someone conduct compliance checks/mystery shops every six (6) months of his businesses that sell tobacco products in the State of Tennessee. Such policy shall require that in the event that

one of his/her business(es) fails a compliance check, the independent entity shall conduct a second-check ("re-check") of the business location within sixty (60) days of the failing compliance check visit. Further, the policy shall also require Respondent conduct a re-check at each of Respondent's businesses that has received notice from a law enforcement agency of an alleged violation of law concerning the sale of tobacco products to minors or the sale of single cigarettes to any consumer.

- N. Respondent shall abide by this Assurance at all of the businesses that he owns or operates in the State of Tennessee which offer for sale tobacco products. Respondent shall implement this Assurance at such outlets within thirty (30) days following the entry of this Assurance. Respondent shall provide to employees who sell tobacco products at company-operated outlets a copy of the youth access tobacco policies and single cigarette sales policies adopted pursuant to this Assurance within thirty (30) days following the date of entry of this Assurance or upon hiring that occurs thereafter. Respondent will provide a copy of such policies to new employees as part of Respondent's training program for newly hired company-operated Retail Outlet employees. Respondent shall also provide a copy of such policies to a person or persons designated by the Attorney General within forty-five (45) days of the Entry of the Assurance, and thereafter will provide, upon request, copies of any changes or modifications to such policies to such designee within thirty (30) days of the request.
- O. Respondent shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, the Department of Agriculture, the Department of Revenue, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.
- P. Respondent shall be prohibited from representing or implying that any procedure or other acts or practices hereafter used or engaged in by Respondent have been approved in whole or in part by the State of Tennessee or any subdivision thereof.

#### **ATTORNEYS' FEES AND COSTS TO THE STATE**

8. Respondent shall pay the sum of Five Hundred Dollars (\$500.00) to the Tennessee Attorney General for attorneys' fees and costs of investigation, prosecution, and monitoring for compliance of this matter, which may be used for consumer protection purposes or other lawful purpose at the sole discretion of the Attorney General. Said payment shall be made by providing

a certified check made payable to the "Treasurer, State of Tennessee – Attorney General" and shall be delivered to the Attorney General on the day of Execution of this Assurance.

9. If the entire amount anticipated by the State of Tennessee is not received, any monies received first shall be attributed to attorneys' fees pursuant to paragraph 8, and then to civil penalties pursuant to paragraph 10. If more than the amount anticipated is received by the State of Tennessee, it shall be attributed to attorneys' fees pursuant to paragraph 8.

#### **TENNESSEE CONSUMER PROTECTION ACT CIVIL PENALTIES**

10. Respondent shall pay the sum of Five Hundred Dollars (\$500.00) to the State of Tennessee as a remedial civil penalty for Respondent's acts and/or practices as described in the State's Petition. Said payment shall be made immediately upon execution of this Assurance by providing the Attorney General with a certified check made payable to the "Treasurer, State of Tennessee - Attorney General".

#### **MONITORING AND COMPLIANCE**

11. Upon request, Respondent agrees to provide books, records, and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request at the Office of the Attorney General in Nashville, Tennessee or at any other location within the State of Tennessee that is mutually agreeable in writing to the Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

12. The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record (audio and/or video) any or all aspects of its solicitations or visit(s) with Respondent without notice to Respondent. Respondent agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

**PRIVATE RIGHT OF ACTION AND ACTIONS RESERVED BY THE STATE**

13. Nothing in this Assurance shall be construed to affect, limit or alter any private right of action that any consumer, person, or any local, state, federal or other governmental entity, may hold against the Respondent.

**PENALTIES FOR FAILURE TO COMPLY**

14. Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

15. Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties, remedies and sanctions, including but not limited to, contempt sanctions and the imposition of attorneys' fees and civil penalties.

## GENERAL PROVISIONS

16. The acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or business practices. Further, neither Respondent nor anyone acting on his behalf shall state or imply or cause to be stated or implied that the State of Tennessee, the Attorney General, the Department of Agriculture, the Department of Commerce and Insurance, the Division of Consumer Affairs or any other governmental unit of the State of Tennessee has approved, sanctioned or authorized any practice, act, advertisement or conduct of the Respondent.

17. This Assurance may only be enforced by the parties hereto or this Honorable Court.

18. The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

19. As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

20. Nothing in this Assurance shall limit the Attorney General's right to obtain information, documents or testimony from Respondent pursuant to any state or federal law, regulation or rule.

21. Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition,

this Assurance shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against Respondent.

22. Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

23. Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

24. Respondent hereby expressly waives and relinquishes any and all rights, remedies, appeals or other interests that he may possess to a jury trial or any derivative rights that flow from a trial by jury under the Tennessee Constitution or United States Constitution or any other law, regulation or rule.

25. No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the party to be charged, and approved by this Honorable Court, and then only to the extent set forth in such written waiver, modification or amendment.

26. Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of



the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

27. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

28 Respondent waives any and all challenges in law or equity to the entry of the Assurance by the courts. Further, Respondent has waived any right to appeal, petition for *certiorari*, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Assurance.

29. Time shall be of the essence with respect to each provision of this Assurance that requires action to be taken by the Respondent within a stated time period or upon a specified date.

30. This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance which are not fully expressed herein or attached hereto.

31. Nothing in this Assurance shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

32. If Respondent declines to obtain the assistance of legal counsel, Respondent has expressly waived his right to counsel by executing this Assurance and Agreed Final Order.

33. Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

34. Respondent has provided the State with certain documents, advertisements, and contracts. Respondent acknowledges and agrees that providing these documents to the State in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with this Assurance, or a release of any issues relating to such documents.

35. Respondent agrees that this Assurance and the Agreed Final Order do not entitle Respondent to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation or rule, and Respondent further waives any rights to attorneys' fees that may arise under such statute, regulation or rule.

36. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance.

37. This Assurance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

38. Respondent waives and relinquishes any arguments, rights or defenses regarding the fact that this Assurance and Agreed Final Order include an injunction but no findings of fact or conclusions of law.

39. Upon full and final payment of all monies required to be paid under this Assurance, this Assurance only resolves and releases Respondent as defined herein of the specific civil law matters set forth in the Tennessee Minimum Pack Size Act, Tenn. Code Ann. § 47-18-2003, occurring prior to entry of this Assurance related to the alleged sale or offering for sale of single cigarettes at Rakestraw Handy Mart # 1, 3909 Elliston Road, Memphis, Tennessee 38111, between July 20, 2010, and July 27, 2010, and as such this civil release is expressly limited to those matters.

#### **REPRESENTATIONS AND WARRANTIES**

40. Respondent represents and warrants that the execution and delivery of this Assurance is his/her free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. Further, the Respondent represents and warrants that no offers, agreements, or inducements of any nature whatsoever have been made to the Respondent by the State of Tennessee, its attorney, or any employee of the Attorney General's Office or the Division of Consumer Affairs, to procure this Assurance.

41. Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

42. Respondent Yahya Mushreh, individually, and d/b/a Rakestraw Handy Mart # 1, warrants and represents that he is the proper party to this Assurance and Agreed Final Order.

Respondent Yahya Mushreh represents and warrants that he is the sole owner, operator and officer of Rakestraw Handy Mart #1.

43. Respondent warrants and represents that Yahya Mushreh, individually, and d/b/a Rakestraw Handy Mart # 1, is the true legal name of the individuals and entities entering into this Assurance of Voluntary Compliance and Agreed Final Order.

44. Respondent warrants and represents that it does not own or operate any other business or entity other than Rakestraw Handy Mart # 1 that offers tobacco products or cigarettes to consumers in whole or in part in Tennessee or from Tennessee.

45. Respondent understands that the State expressly relies upon all of the representations and warranties set forth in this Section of the Assurance and elsewhere within the Assurance and if any of them are false, misleading, deceptive, incomplete, unfair, or inaccurate in any way, the State shall have the right to move to vacate or set aside (*inter alia*) this Assurance and Agreed Final Order (in whole or in part), and request that Respondent be held in contempt or seek statutory sanctions, if the State so elects.

#### **COMPLIANCE WITH ALL LAWS, REGULATIONS, AND RULES**

46. Nothing in this Assurance and Agreed Final Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations, or rules.

#### **FILING OF ASSURANCE**

47. Upon the execution of this Assurance, the Attorney General shall prepare and file in the Circuit Court for Davidson County a Petition, Agreed Final Order, and this Assurance of Voluntary Compliance for the Court's approval. Respondent hereby waives any and all rights which he may have to be heard in connection with judicial proceedings upon the Petition.

Respondent agrees to pay all costs of filing such Petition, Assurance, and Agreed Final Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Final Order. This Assurance is made a part of and is incorporated into the Agreed Final Order. The Respondent consents to the entry of this Assurance and Agreed Final Order without further notice.

#### NOTIFICATION TO STATE

48. Any notices required by this Assurance shall be sent Certified Mail - Return Receipt Requested, by United States Mail or by any other nationally recognized courier service that provides tracking services and identification of the person signing for the document. The Notices shall be sent to the following addresses:

**For the Attorney General:**

Deputy Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202-0207  
Phone: (615) 741-1671  
Facsimile: (615) 532-2910

Deputy Attorney General  
Office of the Attorney General  
Tobacco Enforcement Division  
Post Office Box 20207  
Nashville, TN 37202-0207  
Phone: (615) 741-1376  
Facsimile: (615) 741-3284

**For the Respondent:**

Yahya Mushreh  
3909 Elliston Road  
Memphis, TN 38111  
Phone: 901-743-6112  
Facsimile: NONE  
Attorney - 901-682-2697

The Respondent is required to provide the State with any changes of address ten (10) days prior to any change of address becoming effective.

51. For five (5) years following execution of this Assurance, Respondent shall notify

the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in his/her business structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution of subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

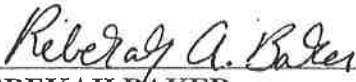
#### COURT COSTS

52. All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.


**FOR THE STATE OF TENNESSEE, ATTORNEY GENERAL:**



**ROBERT E. COOPER, JR.**  
Attorney General and Reporter  
B.P.R. No. 10934



**REBEKAH BAKER**  
Assistant Attorney General  
B.P.R. No. 24308  
Office of the Tennessee Attorney General  
Tobacco Enforcement Division  
Post Office Box 20207  
Nashville, Tennessee 37202-0207  
Phone: (615) 253-5828  
Facsimile: (615) 741-3284  
Email: Rebekah.baker@ag.tn.gov

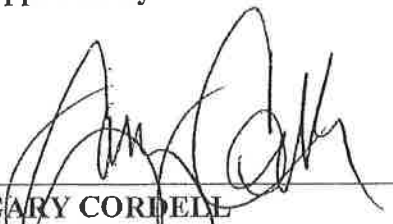
I hereby certify that this is a true copy  
of original instrument filed in my office  
this 20 day of June 2008  
By Richard B. FOOLEY Clerk  
  
Deputy Clerk



**CYNTHIA E. KINSER (MILLS)**  
Deputy Attorney General  
B.P.R. No. 13533  
Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, Tennessee 37202-0207  
Phone: (615) 741-1671  
Facsimile: (615) 532-2910  
Email: Cynthia.Kinser@ag.tn.gov

**IN THE MATTER OF: Yahya Mushreh, individually and d/b/a Rakestraw Handy Mart  
#1, 3909 Elliston Road, Memphis, TN 38111**

**Approved by:**

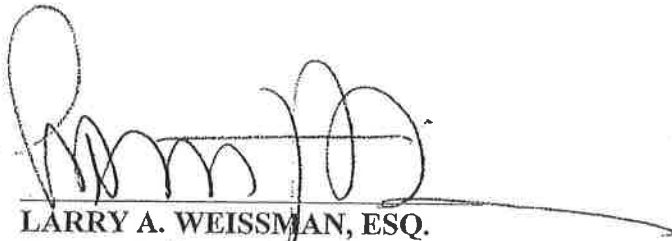
  

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**GARY CORDELL**  
Director  
Division of Consumer Affairs of the  
Department of Commerce and Insurance  
500 James Robertson Parkway  
5th Floor, Davy Crockett Tower  
Nashville, TN 37243-0600  
(615) 741-4737



**FOR THE RESPONDENT:**

A handwritten signature in black ink, appearing to read 'Larry A. Weissman', is written over a horizontal line.

**LARRY A. WEISSMAN, ESQ.**

Counsel for Respondent

TN B.P.R. No.008527

Address: 5118 Park Avenue, Suite 600

Memphis, TN 38117-5710

Telephone No.: (901) 763-2134

Facsimile: (901) 682-2697

Email: larrya16@yahoo.com

**RESPONDENT SIGNATURE AND ACKNOWLEDGMENT**

2011 JUL -8 AM 8:57

RICHARD R. ROOSEN, CLERK

Respondent and his/her attorney (if Respondent elects to retain an attorney) have read and understand this Assurance and each of its terms. Respondent admits to the jurisdiction of the Court in this matter and consents to the entry of this Assurance. Respondent agrees to each and every term contained herein.

I, Yahya Mushreh, being first duly sworn on oath, depose and say that I am the sole owner, operator, and officer of Rakestraw Handy Mart # 1, and am fully authorized and empowered to sign this Assurance on behalf of myself and Rakestraw Handy Mart # 1, and bind the same to the terms hereof.



Yahya Mushreh

Title: Owner

Social Security #: 323-76-7251

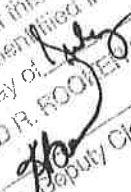
Name of Business: Rakestraw Handy Mart #1

Address: 3909 Elliston Road, Memphis, TN 38111

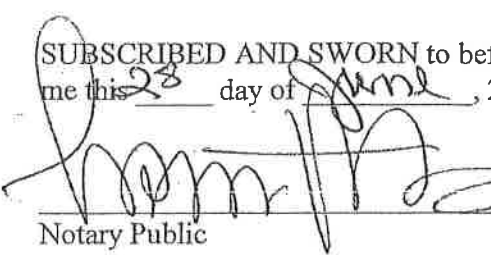
Phone:

Facsimile:

Email:

I hereby certify that this is a true copy  
of original instrument filed in my office  
this 8th day of June, 2011  
By  RICHARD R. ROOSEN, Clerk  
Deputy Clerk

SUBSCRIBED AND SWORN to before  
me this 28th day of June, 2011.

  
Notary Public

My Commission Expires: \_\_\_\_\_



My Commission Expires April 6, 2014

## **EXHIBIT B**

FILED

STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 20207, NASHVILLE, TN 37202  
TELEPHONE (615)741-3491  
FACSIMILE (615)741-2009

2014 MAY 14 AM 8:58

RICHARD R. ROOKER, CLERK

ROBERT E. COOPER, JR.  
ATTORNEY GENERAL AND REPORTER

LUCY HONEY HAYNES  
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON  
CHIEF POLICY DEPUTY

January 3, 2014

Larry A. Weissman, Esq.  
Weissman, Ostrow & Mitchell  
5118 Park Avenue, Suite 600  
Memphis, TN 38117  
Via E-Mail and Certified Mail, Return Receipt Requested

**RE: Violations of Assurance of Voluntary Compliance**  
*State of Tennessee v. Yahya Mushreh, individual and d/b/a Rakestraw*  
*Handy Mart #1, Case No. 11C-2673*

Dear Mr. Weissman:

The purpose of this letter is to advise you that your client, Yahya Mushreh, has violated the terms of the Assurance of Voluntary Compliance ("Assurance") that he entered into with this Office on July 8, 2011. A copy of the Assurance is enclosed for your convenience.

First, paragraph 7N of the Assurance required Mr. Mushreh to provide copies of his youth access tobacco policies and single cigarette sales policies, adopted pursuant to the Assurance, to the Attorney General's designee within 45 days of the entry date of the Assurance. We did not receive copies of the policies. Second, on November 15, 2013, a clerk at the Handy Mart convenience store located at 3909 Elliston Road, Memphis, sold a single cigarette to an undercover test shopper in violation of paragraphs 7D, E, F, G, and H of the Assurance.

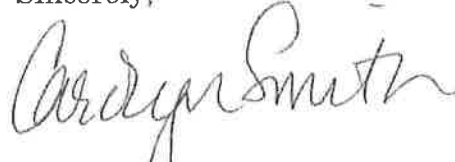
As noted in paragraph 14 of the Assurance, any subsequent failure to comply with the terms of an Assurance is prima facie evidence of a violation of the Tennessee Consumer Protection Act. Further, pursuant to Tenn. Code Ann. § 47-18-107(f), violations of an assurance are subject to civil penalties of not more than \$1,000.00 for each violation in addition to other appropriate sanctions.

Pursuant to Tenn. Code Ann. § 47-18-108, we hereby notify you that we are considering legal proceedings against Mr. Mushreh based on his failure to comply with the terms of the Assurance. If Mr. Mushreh would like to present reasons why

Larry A. Weissman, Esq.  
January 3, 2014  
Page 2

the State should not institute legal proceedings, or if he would like to discuss the possibility of entering into an agreed order resolving the violations, please contact us no later than January 15, 2014.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolyn Smith".

Carolyn Smith  
Senior Counsel  
(615) 532-2578

A handwritten signature in cursive script, appearing to read "Rebekah Baker".

Rebekah Baker  
Assistant Attorney General  
(615) 253-5828

cc: Nancy Jones  
Deputy Commissioner & General Counsel  
Department of Insurance and Commerce

Enclosure: Assurance of Voluntary Compliance